

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6170 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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SAMSUDDIN HAMIDMIYA MALEK

Versus

STATE OF GUJARAT, THROUGH SECRETARY

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
Mr S K Patel, APP for Respondent No. 1  
MS PJ DAVAWALA for Respondent No. 4

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 31/08/2000

ORAL JUDGEMENT

By way of filing this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 21.4.2000 passed by the District Magistrate, Kheda at Nadiad in exercise of powers under section 3(2) of the

Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 with a view to prevent the petitioner from black marketing essential commodities. The petitioner has contended that the orders passed by the detaining authority are illegal and, therefore, they are required to be quashed and set aside. The petitioner has, therefore, prayed that the petition be allowed and the order of detention be quashed and set aside.

2. At the admission stage, rule was issued and in response to the notice, Mr S K Patel, learned AGP appears for respondents No.1, 2 and 3. Ms P J Davawala, Standing Counsel for respondent no.4 is also present. On behalf of the respondents No.1 2, and 3, affidavit of Mr P R Shukla, Dy.Secretary, Government of Gujarat, Food Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar has been filed which is taken on record.

3. I have heard the learned Advocates for the parties and perused the papers. Mrs Subhadra Patel, learned Advocate for the petitioner has contended that the District Magistrate has passed order dated 21.4.2000 and has detained the petitioner on the strength of the said order on the same day. That in passing the said order, the District Magistrate has mentioned that the petitioner is ordered to be taken in detention for six months from the date of detention. Learned Advocate for the petitioner has argued that this order cannot be treated to be legal. It is her contention that the detaining authority can pass order of detention and can actually detain the detenu but thereafter the orders are immediately required to be communicated to Government and the Government is required to consider and approve the said order within 12 days. Thereafter the matter is required to be sent to the Advisory Board within 49 days and the Advisory Board also requires to decide the matter accordingly. That the order of the District Magistrate is subject to the ultimate approval of the State Government and the orders/opinion of the Advisory Board. That till then, the District Magistrate could not have passed the order detaining the detenu for six months.

4. On this aspect, she has relied upon a decision of this Court in the case of Pravin Mahipatrai Mehta v. District Magistrate, Surendranagar reported in 1993 (1) GCD 671. There the Court has observed that when initial order of detention is for one year then it is held to be contrary to the scheme of the Act. Such order requires approval of State Government within 12 days under section

3(3) of the Gujarat Prevention of Anti-Social Activities Act, 1985 and the opinion of the Advisory Board in support under Article 22(4) of the Constitution is required to be obtained. The Division Bench of this Court has considered a decision of the Supreme Court for arriving at the aforesaid decision. This can be gathered from page 5 of the said judgment. In view of the aforesaid decision of the Division Bench which is binding to this Court, I am of the view that there is no hesitation to conclude that the order of detention is illegal inasmuch as at the initial stage the detention has been fixed for six months. In view of the aforesaid, no other point has been pressed into service during the course of argument.

5. In the result, the order of detention is held to be illegal in view of the aforesaid decision of the Division Bench and it is therefore, required to be quashed and set aside. The petition is accordingly allowed. The impugned order of detention dated 21.4.2000 passed by the District Magistrate, Kheda at Nadiad is quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if no longer required in any other case.

Rule is made absolute to the aforesaid extent. No order as to costs.

31.8.2000 [D P Buch, J.]

msh